IN THE CIRCUIT COURT OF GREENE COUNTY
STATE OF MISSOURI

FILED

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MAIL

MICHAEL A. CARR, CIR. CLK.

STATE OF MISSOURI, ex rel., JOHN ASHCROFT, Attorney General of Missouri, and THE MISSOURI DEPARTMENT OF NATURAL RESOURCES,

Plaintiff,

v.

LITTON SYSTEMS, INC.,

Defendant.

Case No. CV182-2093-CC-3

FIRST AMENDED PETITION FOR STATUTORY PENALTIES AND CLEANUP COSTS

COUNT I

COMES NOW the State of Missouri, plaintiff herein, at the relation of John Ashcroft, Attorney General of Missouri, and the Missouri Department of Natural Resources, and for Count I of its petition states:

1. That John Ashcroft is the duly elected, qualified and acting Attorney General of the State of Missouri; and the Missouri Department of Natural Resources (DNR) is a duly authorized state agency created under § 10 of the Omnibus State Reorganization Act of 1974, which administers the provisions of §§ 260.350 to 260.430, RSMo and the rules and regulations promulgated thereunder.

2. That defendant, Litton Systems, Inc., is a duly organized and existing corporation according to the laws of the State of Missouri, with its principal place of business in Greene County, Missouri.

3. That defendant owns and operates a facility for the manufacture of printed circuit boards at 4811 West Kearney Street, Springfield, Greene County, Missouri.

4. That the acts by defendant alleged herein occurred and continue to occur in Greene County, Missouri.

5. That venue in this action is proper according to § 260.425.1, RSMo.

6. That defendant, as part of its circuit board manufacturing operation in Greene County, owned, operated, and maintained a backwash wastewater lagoon (hereafter "Pond A") which received

and contained backwash from an ion exchange, etching and eletro-plating wastewater treatment sludge associated with circuit board production, solvents used in degreasing, chromic acid from smear removel and etching, and spent etchant.

7. That the substances referenced in Paragraph 6 hereof are either listed or characteristic hazardous wastes, or both, pursuant to 10 CSR 25-4.010 and the Hazardous Waste Management Law, §§ 260.350 to 260.430, RSMo.

8. That "Pond A" is a hazardous waste surface impoundment as defined by 10 CSR 25-3.010(1)(S)-4 and 40 CFR § 260.10(a), and a hazardous waste facility as defined by § 260.360(10), RSMo.

9. That the hydrogeology of the land under and around "Pond A" is such that failure of the "Pond A" containment system and dikes would result in contamination of the groundwater since the liquids contained in "Pond A" would quickly enter the sub-surface waters of the state by the numerous local sinkholes in permeable soils over deeply weathered, karst limestone.

10. That defendant has never applied for, nor obtained, a permit from the Missouri Department of Natural Resources authorizing the operation of "Pond A" as required by § 260.395.7, RSMo.

11. That defendant, pursuant to 10 CSR 25-7.011(1)(D), operated "Pond A" under the authority of the Missouri "Interim Status" provision of the Missouri Hazardous Waste Regulations, said "Interim Status" constituting defendant's authorization to operate a hazardous waste surface impoundment.

12. That defendant, in accordance with the Missouri Interim Status Regulation, 10 CSR 25-7.011(1)(D), was required to comply with appropriate portions of 40 CFR Part 265 (a copy of which is attached hereto and incorporated herein by reference as Exhibit 1).

13. That on or about April 30, 1982, defendant removed all or substantially all of the liquids contained in "Pond A," or approximately ten million gallons, by spray irrigating said liquids on the surface of defendant's property and by taking other action in accordance with DNR's "Order to Cease and Correct Imminent

Hazard" dated March 18, 1982 and accompanying emergency directives to Ron Enos, President, Advanced Circuitry Division, Litton Systems, Inc. from Robert Schreiber, Jr., Director of the Division of Environmental Quality for DNR, dated March 19 and 26, 1982. (Copies of said order and directives are attached hereto as if more fully set forth, respectively, as "Exhibit 2," "Exhibit 3" and "Exhibit 4").

14. That defendant was required, pursuant to 10 CSR 25-7.011(1)(D) and 40 CFR Part 265.222, to maintain at least 60 centimeters (two feet) of "freeboard", as defined in 40 CFR Part 260.10, for "Pond A."

15. That on or about June 16, 1981, it was discovered by representatives of the Department of Natural Resources that defendant was not maintaining two feet of freeboard for "Pond A" and was maintaining only four and one half inches of freeboard.

16. That by letter dated July 31, 1981, (A copy of which is attached hereto as Exhibit 5) to Mr. William Guyette, President, Advanced Circuitry Division, Litton Systems, Inc., from Ed Lightfoot, Deputy Director, Air and Land Branch, Missouri Department of Natural Resources, defendant was ordered to achieve two feet of freeboard in "Pond A" by September 18, 1981.

17. That by letter dated September 10, 1981, (A copy of which is attached hereto as Exhibit 6) to Mr. James K. Dow, Facility Manager for defendant, from Ed Lightfoot, Deputy Director, Air and Land Branch, Department of Natural Resources, defendant was allowed an extension until October 30, 1981, to attain the necessary two feet of freeboard for "Pond A."

18. That on or before November 18, 1981, but after June 16, 1981, defendant substantially increased the height of the dikes forming the perimeter of said "Pond A" thereby increasing the capacity of said "Pond A" from approximately eight million gallons to approximately ten million gallons or approximately 25%.

19. That on or about November 18, 1981, defendant had, after increasing the height of the "Pond A" dikes as alleged in Paragraph 18 hereof, increased the liquid level in "Pond A" so that the required two feet of freeboard was not attained and was, on this date, maintaining only 12.25 inches of freeboard.

20. That on or about March 18, 1982, defendant still had not attained the required two feet of freeboard for its said "Pond A" and was maintaining only six inches of freeboard at that time.

21. That defendant's failure to secure the required freeboard, defendant's increase in the height of the "Pond A" dikes, and the increased liquid level in "Pond A" after increasing the height of the "Pond A" dikes, caused, or substantially contributed in causing, excessive saturation, sliding, and point leakage flows on some or all of the dikes comprising the perimeter of said "Pond A" and, in conjunction with the hydrogeologic conditions as alleged in Paragraph nine hereof, created an imminent hazard that a total failure of "Pond A" would occur, with consequent contamination of groundwater, as defined in 10 CSR 25-3.010(G)-3, under and around said "Pond A."

22. That defendant's failure to secure a minimum of two feet of freeboard at its said "Pond A" constitutes a violation of 40 CFR Part 265.222, 10 CSR 25-7.011(1)(D), and § 260.425, RSMo.

23. That defendant's failure to secure a minimum of two feet of freeboard at its said "Pond A" by October 30, 1981 constitutes a failure to comply with the orders from DNR, as alleged in Paragraphs sixteen and seventeen hereof, and is therefore a violation of § 260.425.1, RSMo.

24. That the assessment of a penalty not to exceed $10,000.00 per day for each day, or part thereof, that a violation occurred is authorized by § 260.425.1, RSMo.

WHEREFORE, plaintiff prays the court grant the following relief:

1. An order assessing a penalty against defendant in the amount of $10,000.00 per day for each day, or part thereof, that each of the violations aforesaid occurred and continue to occur.

2. An order assessing the costs of these proceedings against defendant.

3. Such other relief as the court deems just and proper.

COUNT II

COMES NOW plaintiff, and for Count II of its petition states:

25. Plaintiff realleges Paragraphs one through thirteen of its petition and incorporates the same by reference herein.

26. That defendant, as required by 10 CSR 25-7.011(1)(D); 40 CFR Part 265.226 and 40 CFR Part 265.15(c), must inspect the freeboard level of said surface impoundment at least once each operating day to ensure that two feet of freeboard is maintained and to inspect the surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment and to remedy any leaks, deterioration, malfunctions, or inadequate freeboard so found.

27. That on or before June 16, 1981, defendant knew or should have known that inadequate freeboard, less than two feet, was being maintained at said "Pond A."

28. That from June 16, 1981 through March 25, 1982, defendant failed to attain two feet or more of freeboard at said "Pond A."

29. That from on or about June 16, 1981, through March 30, 1982, defendant failed to remedy the said inadequate freeboard, as alleged in Paragraph 28 hereof, at said "Pond A."

30. That said failure to remedy the inadequate freeboard at said "Pond A" constitutes a violation of 40 CFR Part 265.15(c), 10 CSR 25-7.011(1)(D) and § 260.425.1, RSMo.

31. That, pleading in the alternative, defendant failed to inspect the freeboard level of said "Pond A" each operating day from June 16, 1981 through March 30, 1982 and that defendant failed to inspect "Pond A" including dikes and vegetation surrounding the dikes, at least once a week to detect any leaks, deterioration, or failure in "Pond A."

32. That defendant's failure to inspect the freeboard level of said "Pond A" each operating day and defendant's failure to inspect "Pond A," including dikes and vegetation surrounding the dikes, at least once a week to detect any leaks, deterioration, or failures in "Pond A" constitutes a violation of 40 CFR Part 265.226, 10 CSR 25-7.011(1)(D), and § 260.425.1, RSMo.

33. That the assessment of a penalty not to exceed $10,000.00 per day for each day, or part thereof, a violation occurred, is authorized by § 260.425.1, RSMo.

WHEREFORE, plaintiff prays the court grant the following relief:

1. An order assessing a penalty against defendant in the amount of $10,000.00 per day for each day, or part thereof, that each of the violations aforesaid occurred and continues to occur.

2. An order assessing the costs of these proceedings against defendant.

3. Such other relief as the court deems just and proper.

COUNT III

COMES NOW plaintiff and for Count III of its petition states:

34. Plaintiff realleges Paragraphs one through thirteen of its petition and incorporates the same by reference herein.

35. That defendant was required, as of November 19, 1981, to implement a groundwater monitoring program capable of determining "Pond A's" impact on the quality of groundwater in the uppermost aquifer, as defined in 10 CSR 25-3.010(1)(A)-5 and 40 CFR Part 260.10, underlying "Pond A" in accordance with 40 CFR Part 265.90 through 40 CFR Part 265.109, inclusive, and 10 CSR 25-7.011(1)(D).

36. That defendant has not implemented a groundwater monitoring program as alleged in Paragraph 35.

37. That defendant's failure to implement, as of November 19, 1981, a groundwater monitoring program, as alleged in Paragraph 35 hereof, constitutes a violation of 40 CFR Part 265, Subpart F, 10 CSR 25-7.011(1)(D), and § 260.425.1, RSMo.

38. That the assessment of a penalty not to exceed $10,000.00 per day for each day, or part thereof, a violation occurred, is authorized by § 260.425.1, RSMo.

WHEREFORE, plaintiff prays the court grant the following relief:

1. An order assessing a penalty against defendant in the amount of $10,000.00 per day for each day, or part thereof, the violations aforesaid occurred and continue to occur.

2. An order assessing the cost of these proceedings against defendant.

3. Such other relief as the court deems just and proper.

COUNT IV

COMES NOW plaintiff, and for Count IV of its petition states:

39. Plaintiff realleges Paragraphs one through thirteen, eighteen, nineteen, twenty-eight, and twenty-nine of its petition and incorporates the same by reference herein.

40. Defendant is required, in accordance with 40 CFR Part 265.31 and 10 CSR 25-7.011(1)(D), to maintain and operate its said "Pond A" so as to minimize the possibility of, among other things, the sudden or non-sudden release of hazardous waste or hazardous waste constituents to surface water or the soil in a manner which could threaten human health or the environment.

41. That defendant, by failing to maintain adequate free-board (two feet), as alleged in Paragraphs twenty-eight and twenty-nine hereof, by raising the height of the dikes, and by increasing the capacity and liquid level of "Pond A," as alleged in Paragraphs eighteen and nineteen hereof, greatly increased the possibility of a sudden catastrophic release of all hazardous wastes and hazardous waste constituents within "Pond A" to surface water and to the soil under and around "Pond A."

42. That defendant, by maintaining inadequate freeboard, as alleged in Paragraphs twenty-eight and twenty-nine hereof, by raising the height of the dikes and liquid level in "Pond A," as alleged in Paragraphs eighteen and nineteen hereof, and by increasing the capacity of said "Pond A," as alleged in Paragraph eighteen hereof, caused or substantially contributed to the sudden and non-sudden releases of hazardous wastes or hazardous waste constituents to surface waters and to the soil under and around "Pond A."

43. That the increased possibility of a catastrophic release, as alleged in Paragraph forty-one hereof, and the actual releases, as alleged in Paragraph forty-two hereof, presented a threat to human health and the environment in that the hydrogeology of the land under

and around said "Pond A," as alleged in Paragraph 9 hereof, greatly facilitates the entry of any contaminates so released into the subsurface waters and that such subsurface waters are used for, among other things, the drinking water of humans in and around Greene County, Missouri.

44. That the acts or omissions of defendants, as alleged in Paragraphs thirty-nine and forty-three hereof, constitute violations of 40 CFR Part 265.31, 10 CSR 25-7.011(1)(D), and § 260.425.1, RSMo.

45. That the assessment of a penalty not to exceed $10,000.00 per day for each day, or part thereof, a violation occurred is authorized by § 260.425.1, RSMo.

WHEREFORE, plaintiff prays the court grant the following relief:

1. An order assessing a penalty against defendant in the amount of $10,000.00 per day for each day, or part thereof, that each of the violations aforesaid occurred and continue to occur.

2. An order assessing the costs of these proceedings against defendant.

3. Such other relief as the court deems just and proper.

COUNT V

COMES NOW plaintiff, and for Count V of its petition states:

46. Plaintiff realleges Paragraphs one through thirteen of its petition and incorporates the same by reference herein.

47. That §§ 260.390(1) and 260.395.7, RSMo, prohibit, among other things, the substantial alteration of a hazardous waste facility withour first obtaining a hazardous waste facility permit from DNR in accordance with § 260.395, RSMo.

48. That said "Pond A" and all other property that defendant used, or intended to use, for hazardous waste management, constitutes a hazardous waste facility as defined in § 260.360(10), RSMo.

49. That on or before November 18, 1981, but after June 16, 1981, defendant increased the height of the dikes comprising the

perimeter of said "Pond A" thereby increasing the capacity of said "Pond A" from approximately eight million gallons to approximately ten million gallons, or approximately 25%.

50. That the increase in capacity, as alleged in Paragraph forty-nine hereof, constitutes a substantial alteration of defendant's hazardous waste facility, as alleged in Paragraph forty-eight hereof.

51. That prior to substantially altering said hazardous waste facility, as alleged in Paragraphs forty-nine and fifty hereof, defendant did not obtain a Hazardous Waste Facility Permit from DNR as required by §§ 260.390 and 260.395, RSMo.

52. That defendant's failure to first obtain a Hazardous Waste Facility Permit before substantially altering said hazardous waste facility constitutes a violation of §§ 260.390(1), 260.395.7 and 260.425.1, RSMo.

53. That the assessment of a penalty not to exceed $10,000.00 per day for each day, or part thereof, a violation occurred is authorized by § 260.425.1, RSMo.

WHEREFORE, plaintiff prays the court grant the following relief:

1. An order assessing a penalty against defendant in the amount of $10,000.00 per day for each day, or part thereof, that the aforesaid violation occurred and continues to occur.

2. An order assessing the cost of these proceedings against defendant.

3. Such other relief as the court deems just and proper.

COUNT VI

COMES NOW plaintiff and for Count VI of its petition states:

54. Plaintiff realleges Paragraphs one through twenty-one of its petition and incorporates the same by reference herein.

55. That the actions alleged in Paragraph fifty-four hereof, constitute the placement of hazardous waste into or on the land in a manner which endangers or is reasonably likely to endanger the health of humans or the environment.

56. That § 260.375(29), RSMo, mandates that DNR control, abate or clean up any hazardous waste placed into or on the land in a manner which endangers or is reasonably likely to endanger the health of humans or the environment.

57. That § 260.375(29), RSMo, further mandates that DNR take such action as is necessary to recover all costs associated with the cleanup of any hazardous waste from the person responsible for the waste.

58. That § 260.375(29), RSMo, further mandates that any costs recovered pursuant thereto shall be deposited in the hazardous waste fund (created under § 260.391, RSMo).

59. That DNR expended substantial funds in order to abate the imminent hazard and to cleanup the hazardous wastes deposited in said "Pond A," as alleged in paragraph 54.

60. That defendant is the person responsible for the wastes in and around "Pond A."

WHEREFORE, plaintiff prays the court grant the following relief.

1. Determine the amount of funds expended in accordance with paragraph 59 hereof, access against defendant that amount, and order defendant to pay such amount to the hazardous waste fund created by § 260.391, RSMo.

2. Such other relief as the court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, on this 9th day of November, 1982, to:

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Respectfully submitted,

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